

41
Appl. No. 10/697,225
Atty. Docket No. 9396L
Amtd. dated April 11, 2006
Reply to Office Action of January 11, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1 - 25 are pending in the present application. Claims 1-6 and 13-25 have been withdrawn from further consideration pursuant to an earlier restriction and election requirement. Claim 7-12 are rejected under 35 U.S.C. § 103. Claim 7 has been provisionally rejected under the judicially created doctrine of obviousness type double patenting.

Specification

The Office Action contains a section on page 2 headed "Specification." This section recites the guidelines given in the MPEP for the abstract of the disclosure. No actual objection to the abstract of the disclosure in the current application appears to be made. The current abstract appears to comply with all of the guidelines recited in the Office Action. Therefore, the abstract is presumed to be acceptable in the absence of an explicit rejection and explanation thereof.

Rejection Under 35 USC §103 Over Underhill et al. in view of Neading et al.

Claim 7 has been rejected under 35 U.S.C. § 103 over Underhill et al. (US 2003/0114821) in view of Neading et al. (US 2001/0049513). This rejection is traversed.

The Underhill et al. document is characterized in the office action as teaching all elements of Claim 7 except for the visible highlighting. This reading of the Underhill et al. document is expressly not agreed with or acquiesced to. Nevertheless, even assuming the propriety of this reading of Underhill et al., both the proposed combination with Neading et al. and the resulting article do not meet the requirements of a *prima facie* case of obviousness.

Neading et al. is taken as teaching a visible highlighting 14 indicating a presence of the wetness sensation member 16 in the disposable absorbent article and being visible at least when viewing the body-facing surface of the topsheet. (Office Action, page 4 citing Neading et al. p. 2 [0026, 0027]). The Office Action goes on to find that Neading et al. expresses the desire and motivation for a wetness indicator to indicate a visible response in the presence of fluid thereby indicating that the diaper is wet. It is clear from

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both the cited portion of Neading and the Office Action's own description of it that Neading et al. is about providing a visually based wetness indicator. Furthermore, this visible change in response to wetness is provided around the article periphery and not the body facing surface of the topsheet as claimed in Claim 7. The visible highlighting of Claim 7 is both structurally and functionally different from this teaching.

Claim 7 makes clear that the wetness sensation member works by providing a physical sensation of wetness to the skin of the wearer. This is clear by the structural recitation of the various permeable and flow control portions of the respective layers and by the claim elements directed to retarding fluid passage such that the wearer's awareness of urination is enhanced. The awareness of urination is directly tied to the control of fluid penetration not a visible wetness indicator in contrast to Neading et al.

The visible highlighting of Claim 7 is provided on the wetness sensation member to highlight the presence of the wetness sensation member itself to a caregiver not to serve itself as a visible indication of wetness. As explained in the specification, a wetness based response provided in an article may be more effective for training than a visible response. The child may more readily associate the wet feel with the urination event which produced it than with a visible change in the diaper. A potential drawback, however, is that the caregiver may not appreciate the article has such functionality. Additionally, the existence of a wetness based response may be "forgotten" about in the absence of visible highlighting to serve as a feedback reminder of the feature. The visible highlighting then serves a reminder of the "feel wet" feature, encourages the caregiver to facilitate training through the use of the article, and assists the caregiver in aligning the article on the wearer particularly with respect to the feel wet liner to maximize its effectiveness.

The Neading et al. application being about a conventional visible indication of wetness rather than a visible highlighting of a feel wet member of the article itself provides no motivation to modify the Underhill et al. document in the manner attempted in the Office Action. Further, even adding the wetness indicator of Neading et al. to the article of Underhill et al. would result in an article with both a feel wet indicator and a visual wetness indicator. It would not result in the claimed article with a feel wet indicating where the feel wet indicator member itself is provided with visible highlighting on the body facing surface of the topsheet. For at least all of the above reasons, a proper

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prima facie case of obviousness with respect to Claim 7 has not been established and the rejection of this claim should be withdrawn.

Rejections Under 35 USC §103 Over Underhill et al. in view of Neading et al. in further view of Roe et al.

Claims 8-12 have been rejected under 35 U.S.C. § 103 over Underhill et al. in view of Neading et al. and further in view of Roe et al. (US 6,627,786). These rejections are traversed. Claims 8-12 all depend from Claim 7. The rejections of these claims in the Office Action all proceed from the base rejection of Claim 7 as discussed above. The addition of the Roe et al. patent, even if proper in the first instance does nothing to cure the deficiencies noted above with respect to the rejection of Claim 7. Roe et al. is added for teachings about the structural aspects of the wetness sensation member including, for example, spacing sizing, and Z-folding. None of this teaching, however, addresses the failure of the applied references to teach, alone or in combination, the claimed combination of wetness sensation member having the visible highlighting claimed and described above. As such, a proper *prima facie* case of obviousness with respect to Claims 8-12 has not been established and these rejections should be withdrawn.

Provisional Double Patenting Rejection

Claim 7 is provisionally rejected under the judicially created doctrine of obviousness type double patenting over Claims 1 and 6-8 of Application No. 10/815,918. It is expressly not admitted that this rejection is proper. Nevertheless, because this is a provisional and not an actual rejection, applicants will defer addressing this rejection on the merits until such time as one or more of the supposedly conflicting claims are actually issued.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under § 103. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

By Matthew P. Fitzpatrick
 Signature

Matthew P. Fitzpatrick

Typed or Printed Name

Registration No. 41,751

(513) 634-4287

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 Customer No. 27752